

AMENDED IN SENATE JULY 14, 2009

AMENDED IN SENATE JUNE 29, 2009

AMENDED IN ASSEMBLY JUNE 1, 2009

AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 854

Introduced by Assembly Member Arambula

February 26, 2009

An act to add Section 273 to the Labor Code, relating to employment.

LEGISLATIVE COUNSEL'S DIGEST

AB 854, as amended, Arambula. Employment regulation and supervision: unpaid wages.

Existing law provides for the regulation of farm labor contractors and of garment manufacturers by the Labor Commissioner and for their licensure and registration, respectively, by the commissioner.

This bill would require an applicant for licensure as a farm labor contractor, for registration as a garment manufacturer, for renewal or reinstatement of the license or registration, and for a change in key personnel, to submit a statement ~~under penalty of perjury~~ as to whether he or she has satisfied all requirements involving unpaid wages in a final court judgment, as defined, a final order issued by the commissioner, or an accord. *The bill would subject any person who provides false information on the statement to a civil penalty, as specified.* The bill would require the commissioner to deny the application if the statement shows unpaid wages, unless the applicant submits a bond or cash deposit to guarantee payment of the wages or

a notarized accord demonstrating satisfaction of the obligation. The bill would require the commissioner to suspend the license or registration of a farm labor contractor or a garment manufacturer who made a false representation in the statement and would make reinstatement contingent on the applicant demonstrating compliance with the unpaid wages requirements or submitting an accord showing satisfaction of that obligation. The bill would require a licensee or registrant to notify the commissioner within 90 days of a final court judgment, final order issued by the commissioner, or an accord imposing requirements relating to unpaid wages and submit with the notice security, as previously described, for the unpaid wages. The bill would prohibit a licensee or registrant from having a person who is a named judgment debtor in a final court order or order issued by the commissioner for unpaid wages serving in a key personnel capacity and would require the commissioner to suspend the license or registration of a person who violates this prohibition. The bill would require a licensee or registrant to pay to the Labor Commissioner all reasonable costs incurred in suspension activities, as defined, under its provisions.

~~Because the bill would require representations in the statement by the applicant to be made under penalty of perjury, it would impose a state-mandated local program by expanding the crime of perjury.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: ~~yes~~ no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 273 is added to the Labor Code, to read:
- 2 273. (a) The following definitions apply for purposes of this
- 3 section:
- 4 (1) "All activities relating to the suspension" includes any of
- 5 the following which occur as a result of a failure to comply with
- 6 this section:
- 7 (A) Denial of a new application or a renewal application for
- 8 licensure or registration.
- 9 (B) Denial of reinstatement of a license or registration.

1 (C) Suspension of a license or registration.

2 (2) “Farm labor contractor” has the same meaning as set forth
3 in Section 1682.

4 (3) “Final judgment issued by a court” means a judgment with
5 respect to which all possibility of a direct attack, by way of appeal,
6 motion for a new trial, or motion pursuant to Section 663 of the
7 Code of Civil Procedure to vacate the judgment, has been
8 exhausted and also includes any final arbitration award where the
9 time to file a petition for a trial de novo or a petition to vacate or
10 correct the arbitration award has expired, and no petition is
11 pending.

12 (4) “Garment manufacturer” means a person engaged in garment
13 manufacturing as described in Section 2671.

14 (5) “Involving unpaid wages” means all amounts required to
15 be paid by a final judgment, order, or accord involving a failure
16 of the licensee or registrant to pay required wages.

17 (6) “Licensee” has the same meaning as set forth in Section
18 1682.

19 (7) “Registrant” means a person who holds a valid and
20 unrevoked garment manufacturer registration.

21 (b) (1) The Labor Commissioner shall require an applicant for
22 any of the following to submit a statement ~~under penalty of perjury~~
23 as to whether the applicant has satisfied all requirements imposed
24 by a final judgment issued by a court or by a final order issued by
25 the Labor Commissioner or by an accord involving unpaid wages:

26 ~~(1)~~

27 (A) Licensure as a farm labor contractor.

28 ~~(2)~~

29 (B) Registration as a garment manufacturer.

30 ~~(3)~~

31 (C) Renewal or reinstatement of a farm labor contractor license
32 or a garment manufacturer registration.

33 ~~(4)~~

34 (D) A change in the persons identified pursuant to Section 1689
35 or subparagraph (B) of paragraph (1) of subdivision (a) of Section
36 2675.

37 (2) *A person who knowingly provides false information in the*
38 *statement submitted pursuant to this subdivision shall be subject*
39 *to a civil penalty of no less than one thousand dollars (\$1,000)*
40 *nor more than twenty-five thousand dollars (\$25,000), in addition*

1 to any civil remedies available to the Labor Commissioner. The
2 penalty shall be recovered by the Labor Commissioner as part of
3 a hearing relating to a denial of an application for a license or
4 registration, a hearing relating to a denial of a renewal or
5 reinstatement of a license or registration, a hearing to contest the
6 civil penalties assessed under this section by the Labor
7 Commissioner, or in an independent civil action. The action shall
8 be brought in the name of the people of the State of California and
9 the Labor Commissioner and the attorneys thereof may proceed
10 and act for and on behalf of the people in bringing these actions.

11 (c) Notwithstanding any other provision of law, the Labor
12 Commissioner shall not approve an application described in
13 subdivision (b) if the statement submitted with it shows that the
14 applicant has failed to satisfy all requirements imposed by a final
15 judgment issued by a court or by a final order issued by the Labor
16 Commissioner or by an accord involving unpaid wages, as
17 described in subdivision (b), unless the applicant submits either
18 of the following to the Labor Commissioner:

19 (1) A bond or a cash deposit, in addition to any required by
20 Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient
21 to guarantee payment of all amounts due under a final judgment
22 issued by a court or by a final order issued by the Labor
23 Commissioner involving unpaid wages.

24 (2) A notarized accord between the applicant and the other
25 parties to the judgment, order, or accord demonstrating that the
26 applicant has satisfied all requirements imposed by the judgment,
27 order, or accord involving unpaid wages.

28 (d) Notwithstanding any other provision of law, if the Labor
29 Commissioner determines after granting an application described
30 in subdivision (b), that the applicant made a false representation
31 on the statement he or she submitted, the Labor Commissioner
32 shall suspend the farm labor contractor license or garment
33 manufacturer registration effective on the date of its issuance,
34 renewal, or reinstatement. The license or registration shall remain
35 suspended until the applicant satisfies either of the following
36 requirements:

37 (1) Documents to the satisfaction of the Labor Commissioner
38 that he or she has satisfied all requirements imposed by a final
39 judgment issued by a court or by a final order of the Labor
40 Commissioner or by an accord involving unpaid wages.

1 (2) Files with the Labor Commissioner a notarized accord as
2 described in paragraph (2) of subdivision (c).

3 (e) (1) A licensee or registrant shall notify the Labor
4 Commissioner in writing within 90 days of the date of a final
5 judgment issued by a court, a final order issued by the Labor
6 Commissioner, or an accord that imposes on the licensee or
7 registrant requirements involving unpaid wages. If the licensee or
8 registrant fails to comply with this notification requirement, the
9 Labor Commissioner shall suspend the license or registration on
10 the date that the Labor Commissioner is informed, or is made
11 aware of, the judgment, order, or accord. The suspension shall
12 remain in effect until the licensee or registrant satisfies either of
13 the requirements described in subdivision (d).

14 (2) A licensee or registrant who notifies the Labor Commissioner
15 of a judgment, order, or accord pursuant to paragraph (1), shall
16 file with the notice a bond or a cash deposit meeting the criteria
17 of paragraph (1) of subdivision (c).

18 (f) (1) The Labor Commissioner may reduce the amount of a
19 bond or cash deposit required by this section upon proof, to the
20 satisfaction of the Labor Commissioner, of partial satisfaction of
21 the requirements imposed by a final judgment issued by a court,
22 a final order issued by the Labor Commissioner, or an accord
23 involving unpaid wages. The Labor Commissioner shall not reduce
24 the bond or cash deposit amount below the balance of the entire
25 amount involving unpaid wages. Upon full satisfaction of the
26 requirements involving unpaid wages, the Labor Commissioner
27 may terminate the bond or cash deposit requirement.

28 (2) Notwithstanding paragraph (1), within one year from the
29 date of filing the bond or cash deposit pursuant to paragraph (1)
30 of subdivision (c) or paragraph (2) of subdivision (e), a licensee
31 or registrant shall submit a notarized accord between the licensee
32 or registrant and the other parties to the judgment, order, or accord
33 demonstrating satisfaction of all requirements imposed by the
34 judgment, order, or accord involving unpaid wages. The Labor
35 Commissioner shall suspend the license or registration of a person
36 who fails to file the notarized accord within that timeframe.
37 Notwithstanding paragraph (1) of subdivision (c), a person who
38 has failed to file a notarized accord within the timeframe required
39 by this subdivision shall have his or her license or registration
40 reinstated only after demonstrating that he or she has satisfied all

1 requirements imposed by a final judgment, order, or accord
2 involving unpaid wages. As an alternative to payment in full of
3 all debts involving unpaid wages, a person may submit a notarized
4 copy of an accord between the licensee or registrant and the other
5 parties to the accord.

6 (g) The failure of a licensee or registrant to maintain a bond
7 required by this section or to abide by all requirements imposed
8 on a licensee or registrant by an accord involving unpaid wages
9 between the licensee or registrant and the other parties to the accord
10 shall result in the automatic suspension of his or her license or
11 registration.

12 (h) (1) A licensee or registrant shall not allow a person who is
13 a judgment debtor in a final judgment issued by a court or in a
14 final order issued by the Labor Commissioner involving unpaid
15 wages that imposes requirements that have not been satisfied in
16 their entirety to serve in a capacity described in Section 1689 or
17 subparagraph (B) of paragraph (1) of subdivision (a) of Section
18 2675.

19 (2) The Labor Commissioner shall suspend the license of a farm
20 labor contractor or the registration of a garment manufacturer who
21 violates the provisions of paragraph (1). The Labor Commissioner
22 shall reinstate the license or registration upon the resignation of
23 the person named as a judgment debtor or complete satisfaction
24 of the unpaid wages requirements.

25 (i) A person whose license or registration is suspended pursuant
26 to this section shall pay to the Labor Commissioner all reasonable
27 costs incurred by the Labor Commissioner in all activities relating
28 to the suspension, commencing with the first notice issued by the
29 Labor Commissioner that he or she has taken any adverse action
30 under this section relative to a license or registration. The Labor
31 Commissioner shall not reinstate a license or registration unless
32 the person has paid all costs assessed by the Labor Commissioner
33 or has entered into an accord with the Labor Commissioner that
34 establishes a payment plan.

35 (j) This section shall not apply to an applicant for a farm labor
36 contractor license or a garment manufacturer registration or to a
37 licensee or registrant when the unpaid wages, as described by this
38 section, have been discharged in a bankruptcy proceeding.

39 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~
2 ~~district will be incurred because this act creates a new crime or~~
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~
5 ~~the Government Code, or changes the definition of a crime within~~
6 ~~the meaning of Section 6 of Article XIII B of the California~~
7 ~~Constitution.~~

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